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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

17 UNITED STATES OF AMERICA,	}	Case No.
18 Plaintiff,		
19 v.		
20 CEMEX CALIFORNIA CEMENT,	}	COMPLAINT
21 LLC,		
22 Defendant.	}	

23 **COMPLAINT FOR INJUNCTIVE RELIEF**
24 **AND CIVIL PENALTIES PURSUANT TO THE CLEAN AIR ACT**

25 Plaintiff, the United States of America, by authority of the Attorney General
26 of the United States and through the undersigned attorneys, acting at the request of
27 the Administrator of the United States Environmental Protection Agency ("EPA"),
28 files this complaint and alleges as follows:

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7. The Facility consists of two geographical components. One is the Black Mountain Quarry Plant ("Quarry Plant") located near Apple Valley, California and the other is the River Plant located in Victorville, California. The two Plants are connected by a dedicated railroad.

8. At the Quarry Plant, limestone, clay and other raw materials are combined and heated to produce clinker. Clinker consists of small dark gray nodules 3-4 centimeters in diameter. The clinker is transported from the Quarry Plant to the River Plant where it is ground and combined with gypsum to produce cement.

9. During the clinker production process, the Facility emits pollutants, including, but not limited to, carbon monoxide ("CO"), nitrogen oxides ("NOx") and sulfur dioxide ("SO2").

10. Defendant is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

CAA and National Ambient Air Quality Standards

11. The CAA was enacted to protect and enhance the quality of the Nation's air. Section 101(b) of the CAA, 42 U.S.C. § 7401(b).

12. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards (“NAAQS”) for certain air pollutants. The NAAQS establish primary air quality standards to protect public health and secondary standards to protect public welfare. Section 109(b) of the CAA, 42 U.S.C. § 7409(b).

13. The Administrator has promulgated NAAQS for CO, nitrogen dioxide (“NO₂”) (which is a type of NO_x) and SO₂. 40 C.F.R. §§ 50.4 and 50.5 (1996); 40 C.F.R. § 50.8 (1985) and § 50.11 (1985).

1 14. Under Section 107(d)(1)(A) of the CAA, 42 U.S.C. § 7407(d)(1)(A),
2 each state is required to designate areas, within its boundaries, where the air
3 quality attains the NAAQS, fails to attain the NAAQS, or cannot be classified due
4 to insufficient data. Areas that meet the NAAQS for a particular pollutant are
5 called "attainment" areas for that pollutant, while areas that do not meet the
6 NAAQS for a particular pollutant are called "non-attainment" areas. Areas that
7 can not be classified are called "unclassifiable."

8 15. The Facility is located in the Southeast Desert Air Quality
9 Management Area ("Area").

10 16. At all times relevant to this action, the Area was designated as
11 attainment or unclassifiable for CO, NO₂ and SO₂. 40 C.F.R. § 81.305 (1978).

12 17. To achieve the objectives of the NAAQS and the CAA, Section
13 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to submit a plan to the
14 Administrator that provides for the implementation, maintenance and enforcement
15 of the NAAQS in each air quality control region. This plan is known as an
16 applicable implementation plan.

17 **Prevention of Significant Deterioration of Air Quality**

18 18. Areas that are attainment or unclassifiable are subject to statutory and
19 regulatory Prevention of Significant Deterioration of Air Quality ("PSD")
20 provisions. Subchapter I, Part C of the CAA, 42 U.S.C. §§ 7470-7492 and 40
21 C.F.R. § 52.21 (1980) (1997 and 2000 Editions).

22 19. The PSD program seeks to prevent significant deterioration where
23 ambient air standards are being met or have not been classified. Specifically, its
24 purposes are to: 1) prevent significant deterioration of air quality in attainment
25 areas, 2) protect the public health and welfare from adverse effects from air
26 pollution, 3) ensure that emissions from a source do not interfere with the

1 prevention of significant deterioration of air quality in other areas, and 4) ensure
2 that any decision to permit increased air pollution in an attainment or
3 unclassifiable area is made only after careful evaluation of the consequences, an
4 opportunity for public participation and an informed decision-making process.
5 Section 160 of the CAA, 42 U.S.C. § 7470.

6 20. The core of the program is that “[n]o major emitting facility . . . may
7 be constructed in any area to which this part applies unless” various requirements
8 are met. Section 165(a) of the CAA, 42 U.S.C. § 7475(a). These requirements
9 include obtaining a permit with emission limits, demonstrating that emissions will
10 not contribute to a NAAQS violation and applying “best available control
11 technology” (“BACT”) to control emissions. Id.

12 21. Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), requires
13 that each applicable implementation plan include a PSD permit program as
14 provided in Subchapter I, Part C of the CAA, 42 U.S.C. §§ 7470-7492.

15 22. Section 161 of the CAA, 42 U.S.C. § 7471, requires each applicable
16 implementation plan to contain “emission limitations and such other measures as
17 may be necessary . . . to prevent significant deterioration of air quality” in
18 attainment and unclassifiable areas.

19 23. Pursuant to Subchapter I, Part C of the CAA, 42 U.S.C. §§ 7470-
20 7492, EPA promulgated 40 C.F.R. § 52.21, the PSD regulations.

21 24. The provisions of 40 C.F.R. § 52.21(b) through (w) were
22 incorporated by reference and made part of California’s applicable implementation
23 plan in 1985. 40 C.F.R. § 52.270(a)(3) (1985).

1 25. Based on the Facility's geographic location, it is subject to the
2 jurisdiction of the Mojave Desert Air Quality Management District ("District").
3 However, the PSD permitting program has not been delegated to the District;
4 therefore, EPA is the PSD permitting authority for the Facility.

5 26. In general, the PSD regulations require major stationary sources and
6 major modifications to major stationary sources to apply for, obtain and operate in
7 accordance with a PSD permit.

8 27. In pertinent part, the PSD regulations define a "major stationary
9 source" to be, among others, a portland cement plant that emits or has the potential
10 to emit regulated pollutants in amounts equal to or greater than 100 tons per year
11 ("tpy"). 40 C.F.R. § 52.21(b)(1)(i)(a).

12 28. The PSD regulations define "potential to emit" as "the maximum
13 capacity of a stationary source to emit a pollutant under its physical and
14 operational design." 40 C.F.R. § 52.21(b)(4). Physical and operational limitations
15 on a source's capacity to emit may be considered only if they meet certain criteria,
16 such as inclusion in a federally enforceable permit. Id.

17 29. "Major modification" is defined as "any physical change in or change
18 in the method of operation of a major stationary source that would result in a
19 significant net emissions increase of any pollutant subject to regulation under the
20 Act." 40 C.F.R. § 52.21(b)(2)(i).

21 30. An emissions increase is "significant" if the net increase or potential
22 to emit is equal to or greater than 100 tpy of CO, 40 tpy of NO_x or 40 tpy of SO₂.
23 40 C.F.R. § 52.21(b)(23)(i).

1 31. "Net emissions increase" is defined as "[a]ny increase in actual
2 emissions from a particular physical change or change in method of operation"
3 and any other emissions increase or decrease at the source that is contemporaneous
4 and creditable. 40 C.F.R. § 52.21(b)(3)(i).

5 32. The PSD regulations define "actual emissions" as follows: "In
6 general, actual emissions as of a particular date shall equal the average rate, in
7 tons per year, at which the unit actually emitted the pollutant during a two-year
8 period which precedes the particular date and which is representative of normal
9 source operation." 40 C.F.R. § 52.21(b)(21)(i)-(ii). In addition, "[f]or any
10 emissions unit . . . which has not begun normal operations on the particular date,
11 actual emissions shall equal the potential to emit of the unit on that date." 40
12 C.F.R. § 52.21(b)(21)(iv).

13 33. The requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21
14 apply to any major stationary source and any major modification proposed to be
15 constructed in an attainment or unclassifiable area. The requirements apply with
16 respect to each pollutant, subject to regulation under the CAA, that it would emit.
17 40 C.F.R. § 52.21(i)(2)-(3).

18 34. If a source meets the criteria above, then it is subject to the PSD
19 permitting process. The PSD permitting process requires among other things,
20 applying for, obtaining and operating pursuant to a PSD permit, an analysis of
21 source impacts, air quality modeling and analysis, the application of best available
22 control technology and meaningful public participation in the process. 40 C.F.R.
23 § 52.21(j)-(q).

1 35. No stationary source or modification to which the requirements of
2 paragraphs (j) through (r) of 40 C.F.R. § 52.21 apply shall begin actual
3 construction without a permit which states that the stationary source or
4 modification will meet those requirements. 40 C.F.R. § 52.21(i)(1).

5 36. Any owner or operator of a source or modification subject to 40
6 C.F.R. § 52.21 who constructs or operates a source not in accordance with a PSD
7 application or commences construction without applying for and receiving
8 approval thereunder is subject to an enforcement action. 40 C.F.R. § 52.21(r)(1).

9 **Title V Permit**

10 37. Title V of the CAA, Sections 501-507, 42 U.S.C. §§ 7661-7661f,
11 establishes an operating permit program for certain sources, including “major
12 sources” and any source required to have a PSD permit. Section 502(a), 42 U.S.C.
13 § 7661a(a). Regulations implementing the Title V permit program are set forth in
14 40 C.F.R. Part 70 (State Operating Permit Programs).

15 38. Pursuant to the Title V program, it is unlawful for any person
16 to violate any requirement of a permit issued under Title V or to operate a major
17 source except in compliance with a permit issued by a permitting authority under
18 Title V. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a). The requirement to
19 obtain and operate pursuant to a Title V permit is further set forth in District
20 Regulation II, Rule 221(A)(1)-(2) (District’s Title V program granted final
21 approval by EPA in 2003).

1 39. Sources subject to Title V are required to submit timely and complete
2 applications and obtain and comply with an operating permit that: 1) contains
3 such conditions necessary to assure compliance with the applicable requirements,
4 2) identifies all applicable requirements the source is subject to (including PSD
5 requirements such as BACT analysis and installation) and 3) certifies compliance
6 with all applicable requirements, and where a source is not meeting requirements,
7 contains a plan for coming into compliance. Section 503 of the CAA, 42 U.S.C.
8 § 7661b; Section 504(a) of the CAA, 42 U.S.C. § 7661c(a); 40 C.F.R. §§ 70.1
9 (1992); 70.5 (1992) and 70.6 (1992).

10 **Enforcement Authority**

11 40. The Administrator is authorized to bring a civil action, in accordance
12 with Section 113(b) of the CAA, 42 U.S.C. § 7413(b), whenever he finds that a
13 person has violated or is in violation of any requirement or prohibition of an
14 applicable implementation plan or permit or that a person has violated or is in
15 violation of certain subchapters of the CAA including PSD and Title V and any
16 requirement or prohibition issued or approved under these provisions. Section
17 113(a)(1), (3) of the CAA, 42 U.S.C. § 7413(a)(1), (3) and Section 113(b)(1)-(2)
18 of the CAA, 42 U.S.C. § 7413(b)(1)-(2). See also 40 C.F.R. § 52.23 (1974).

19 41. EPA may commence a civil action and seek injunctive relief as well
20 as civil penalties for each day of violation. Section 113(b) of the CAA, 42 U.S.C.
21 § 7413(b). Pursuant to the Debt Collection Improvement Act of 1996, Pub. L.
22 104-134, and 40 C.F.R. § 19.4 (2004) (Table), civil penalties of up to \$27,500 per
23 day per violation may be assessed for violations occurring between January 30,
24 1997 and March 15, 2004 and up to \$32,500 per day per violation for violations
25 occurring after March 15, 2004.

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1 42. The Administrator is authorized to take such measures, including
2 seeking injunctive relief, to prevent the construction, modification or operation of
3 a major emitting facility which does not conform to the PSD requirements in Part
4 C of the Act. Section 167 of the CAA, 42 U.S.C. § 7477.

5 43. In September 2005, EPA issued a Notice of Violation to Defendant
6 for violations of the CAA and the applicable implementation plan.

7 **GENERAL ALLEGATIONS**

8 44. Defendant owns and operates a portland cement manufacturing
9 facility located in and near Victorville, CA. Portland cement is a component of
10 the product concrete.

11 45. Over the course of its operation, the Facility has undergone
12 numerous changes and upgrades. This action focuses on two particular
13 modifications Defendant undertook at its Facility, one in 1997 and one in 2000,
14 which resulted in violations of the CAA and the applicable implementation plan.

15 46. At all times relevant to this action, CEMEX California Cement,
16 LLC (formerly Southdown California Cement, LLC) has owned and operated the
17 Facility.

18 47. At all times relevant to this action, the Facility was a “major
19 stationary source” within the meaning of the CAA, the PSD regulations and the
20 applicable implementation plan. At all times relevant to this action, the Facility
21 was a “major source” within the meaning of the CAA’s Title V program and 40
22 C.F.R. § 70.2 (1992), and at all times relevant to this action, the Facility was a
23 “facility” and “major facility” within the meaning of the District’s Title V
24 program, District Regulation II, Rule 221 and District Regulation XII, Rules 1200-
25 1210.

1 **FIRST CLAIM FOR RELIEF**

2 **(PSD Violations - 1997 Modification)**

3 48. Paragraphs 1 through 47 of the Complaint are realleged and
4 incorporated herein.

5 49. In or about 1997, Defendant commenced construction of one or more
6 major modifications, as defined in the CAA, the PSD regulations and the
7 applicable implementation plan, at its Quarry Plant.

8 50. Amongst other things, the modification included upgrading kiln Q2
9 which allowed the Facility to substantially increase its clinker production.

10 51. CEMEX began operation of the modified kiln in approximately
11 August of 1997.

12 52. The modification(s) involved a physical change or change in the
13 method of operation of a major stationary source that resulted in significant net
14 emissions increases, as defined by the relevant PSD regulations and the applicable
15 implementation plan, of CO, NO_x and SO₂, which triggered the PSD
16 requirements.

17 53. Defendant failed to apply for, obtain or operate pursuant to a PSD
18 permit for the modification(s), including the construction and operation of the
19 modified kiln Q2.

20 54. By failing to apply for and obtain a PSD permit, Defendant failed to:
21 1) undergo proper PSD BACT analysis, 2) install and operate the best available
22 control technology for the control of CO, NO_x and SO₂, 3) demonstrate that
23 allowable emission increases from the modification would not cause or contribute
24 to air pollution violations, 4) provide for review and public comment on the air
25 quality impacts of the modification, and 5) provide for or receive review of the
26 modification by EPA, the proper permitting authority. Section 165(a) of the CAA,
27 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21(j)-(q).

55. Defendant's modification and operation of kiln Q2 without a PSD permit constitutes a continuing violation of the CAA and the applicable implementation plan. Unless restrained by an order of this Court, these violations will continue.

56. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and Section 167 of the CAA, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$27,500 per day for each day of violation occurring between January 30, 1997 through March 15, 2004 and up to \$32,500 per day for each day of violation after March 15, 2004. 40 C.F.R. § 19.4 (Table).

SECOND CLAIM FOR RELIEF

(PSD Violations - 2000 Modification)

57. Paragraphs 1 through 47 of the Complaint are realleged and incorporated herein.

58. In or about 2000, Defendant commenced construction of one or more major modifications, as defined in the CAA, the PSD regulations and the applicable implementation plan, at its Quarry Plant.

59. Among other things, the modification included construction of a new kiln -- Q3 -- which allowed the Facility to substantially increase its clinker production.

60. CEMEX began operation of the new kiln in 2001.

61. The modification(s) involved a physical change or change in the method of operation of a major stationary source that resulted in a significant net emissions increase, as defined by the relevant PSD regulations and the applicable implementation plan, of NO_x, which triggered the PSD requirements.

62. Defendant failed to apply for, obtain or operate pursuant to a PSD permit for the construction and operation of Q3.

63. By failing to seek or obtain a PSD permit, Defendant failed to: 1) undergo proper PSD BACT analysis, 2) install and operate the best available control technology for the control of NO_x, 3) demonstrate that allowable emission increases from the modification would not cause or contribute to air pollution violations, 4) provide for review and public comment on the air quality impacts of the modification, and 5) provide for or receive review of the modification by EPA, the proper permitting authority. Section 165(a) of the CAA, 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21(j)-(q).

9 64. Defendant's construction and operation of kiln Q3 without a PSD
10 permit constitutes a continuing violation of the CAA and the applicable
11 implementation plan. Unless restrained by an order of this Court, these violations
12 will continue.

13 65. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and
14 Section 167 of the CAA, 42 U.S.C. § 7477, the violations set forth above subject
15 Defendant to injunctive relief and civil penalties of up to \$27,500 per day for each
16 day of violation occurring between January 30, 1997 through March 15, 2004 and
17 up to \$32,500 per day for each day of violation after March 15, 2004. 40 C.F.R.
18 § 19.4 (Table).

THIRD CLAIM FOR RELIEF

(Title V Violation - Operation with a Deficient Permit)

66. Paragraphs 1 through 47 of the Complaint are realleged and
incorporated herein.

67. As set forth above, Defendant commenced one or more major modifications at its Facility in 1997 and 2000. As a result, these modifications triggered the requirements to, *inter alia*, obtain a PSD permit, to undergo a PSD BACT analysis and to operate in compliance with the PSD permit. Defendant failed to satisfy these requirements.

1 68. Subsequently, Defendant failed to submit a complete application for a
2 Title V operating permit that included enforceable emission limits, identification
3 of all applicable requirements (including the PSD requirements and appropriate
4 BACT for CO, NOx and SO₂), accurate certification of compliance with all
5 requirements, and a compliance plan for all requirements for which the source was
6 not in compliance as required by Section 503 of the CAA, 42 U.S.C. § 7661b(a)-
7 (b); Section 504(a) of the CAA, 42 U.S.C. § 7661c(a) and 40 C.F.R. § 70.5(a), (c).

8 69. Thereafter, Defendant failed to supplement and/or correct its Title V
9 application as required by 40 C.F.R. § 70.5(b).

10 70. As a result of Defendant's failure to provide complete information in
11 its application or to properly supplement or correct, Defendant obtained a deficient
12 Title V operating permit in 2004.

13 71. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is
14 unlawful for any person to operate a source required to have a PSD permit except
15 in compliance with a permit issued by a permitting authority under Title V. The
16 regulations at 40 C.F.R. § 70.1(b) require all sources subject to the regulations to
17 have an operating permit that assures compliance with the applicable
18 requirements. See also 40 C.F.R. § 70.6(a).

19 72. Defendant has operated and continues to operate without a valid Title
20 V operating permit in violation of Section 502 of the CAA, 42 U.S.C. § 7661a;
21 Section 503 of the CAA, 42 U.S.C. § 7661b; Section 504 of the CAA, 42 U.S.C.
22 § 7661c; and 40 C.F.R. §§ 70.1, 70.5 and 70.6. Unless restrained by this Court,
23 these violations will continue.

24 73. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the
25 violations set forth above subject Defendant to injunctive relief and civil penalties
26 of up to \$27,500 per day for each day of violation occurring between January 30,
27 1997 through March 15, 2004 and up to \$32,500 per day for each day of violation
28 after March 15, 2004. 40 C.F.R. § 19.4 (Table).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the United States respectfully prays and requests that this Court:

3 1. Permanently enjoin the Defendant from operating the Facility,
4 including the construction of future modifications, except in accordance with the
5 CAA and the applicable implementation plan;

6 2. Require Defendant to remedy its past violations by ordering
7 Defendant to apply for and obtain permits that are in conformity with the
8 requirements of the PSD and Title V programs;

9 3. Require Defendant to remedy its past violations by, among other
10 things, ordering Defendant to install and operate, the best available control
11 technology at kilns Q2 and Q3 as required by the CAA and the applicable
12 implementation plan;

13 4. Assess civil penalties of up to \$27,500 per day for each day of
14 violation occurring between January 30, 1997 through March 15, 2004 and up to
15 \$32,500 per day for each violation after March 15, 2004;

16 5. Award the United States its costs; and

17 6. Grant the United States such other relief as the Court deems just and
18 proper.

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20 Respectfully submitted,
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